

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CENTRAL DIVISION**

JESSIE FOX,

Plaintiff,

v.

TRINITY REGIONAL MEDICAL
CENTER, TRINITY HEALTH
SYSTEMS, INC., and IOWA HEALTH
SYSTEM, non-profit corporations,

Defendants.

No. 11-cv-3008

COMPLAINT AND JURY DEMAND

COMPLAINT

Plaintiff, by and through her attorneys, pursuant to F.R.C.P. 8.(a)(1)-(3), upon personal knowledge as to herself and her own acts and upon information and belief as to all other matters, alleges as follows:

NATURE OF THE ACTION

1. Plaintiff Jessie Fox (Ms. Fox), a profoundly deaf person, brings this action on behalf of herself and all others similarly situated against defendants, Trinity Regional Medical Center, Trinity Health Systems, and Iowa Health System (“Trinity” or “Defendants”) for Trinity’s unlawful practice of denying reasonable accommodations such as sign language interpreters for persons who are deaf or hard of hearing to facilitate and ensure effective communication during their appointments thus denying the persons who are deaf or hard of hearing to actively participate in their own and/or minor child’s medical treatment at Trinity.

2. Ms. Fox notified Trinity that she needed a sign language interpreter for her daughter's, Addison Fox (Addison), appointment on March 9, 2009.

3. On March 9, 2009, Trinity did not provide a sign language interpreter or a reasonable accommodation to facilitate effective communication between Ms. Fox and medical staff during Addison's pre-operative appointment.

4. Ms. Fox, as a deaf person, cannot communicate vocally, by lip reading, by written English, or by hearing.

5. As a result, she was not able to actively participate in her daughter's medical treatment at Trinity without a sign language interpreter.

6. Trinity's nurse used Ms. Fox's seven year-old daughter, Addison, to interpret for Ms. Fox to obtain Addison's medical history and to provide pre-operative instructions.

7. Addison as a seven year-old did not understand the medical terminology to interpret the information to her mother, Ms. Fox. Ms. Fox was placed in the child like role whereas Addison was placed in the adult like role. Ms. Fox was exasperated, frustrated, and helpless as a parent during her daughter's pre-operative appointment.

8. Trinity increased its risk for mistreating a patient by relying on a seven year-old interpreter to facilitate medical communication between a nurse and a parent regarding the pre-operative treatment of the seven year old patient.

9. Addison was to continue taking an antibiotic two weeks prior to the surgery on March 16, 2009, but Ms. Fox discontinued Addison's antibiotic on March 9, 2009, because it was her understanding that the nurse told Addison the following, "no medicine for surgery."

10. The lack of effective communication between Trinity's nurse and Ms. Fox via Addison clearly led to misunderstandings and incorrect pre-operative instructions.

11. Trinity did not provide high quality and accessible health care services to Ms. Fox due to the lack of reasonable accommodations to facilitate effective communication with and active participation by Ms. Fox.

12. Thus, Trinity has violated and continues to violate the American with Disabilities Act ("ADA") and Section 504 of the Rehabilitation Act of 1973 ("RA") with respect to deaf and hard of hearing persons.

PARTIES

13. Plaintiff Jessie Fox is a resident of the city of Fort Dodge in Webster County, Iowa.

14. Defendant Trinity Regional Medical Center is an accredited and licensed 200 bed non-profit hospital providing outpatient and inpatient primary and secondary care services in Fort Dodge in Webster County and the surrounding communities in Iowa.

15. Trinity is a 501(c)(3) organization.

16. Trinity is a senior affiliate of Defendant Iowa Health System and partner with Trimark Physicians Group.

17. Defendant Trinity Health Systems is the parent corporation overseeing Trinity's operation.

JURISDICTION AND VENUE

18. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S. § 1331.

19. Trinity operates as a non-profit corporation to provide outpatient and inpatient primary and secondary care services for persons residing in this district to receive medical care.

20. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b) & (c) and L.R. 3(b)(1)(B).

PROCEDURAL REQUIREMENTS

21. Plaintiff has brought this lawsuit within two years of the date of the acts of which she complains.

FACTS RELATING TO PLAINTIFF

22. Ms. Fox is diagnosed as profoundly deaf, the most severe categorization of deafness. The categories of deafness in increasing order of severity are mild, moderate, moderately severe, severe, and profound.

23. Approximately three days prior to the appointment, Ms. Fox requested a sign language interpreter for her daughter's pre-operative appointment on March 9, 2009 at Trinity.

24. On March 9, 2009, Ms. Fox and her seven year-old daughter, Addison, arrived at Trinity for the pre-operative appointment.

25. Despite Ms. Fox's initial prior request and requests during the appointment on March 9, 2009, Trinity denied and continued to deny a sign language interpreter for Ms. Fox to actively participate in and effectively communicate about Addison's medical care.

26. The nurse of Defendant talked with Addison and had her interpret patient history questions to Ms. Fox to obtain Addison's medical history.

27. Addison did not understand the medical terminology to interpret or fingerspell to Ms. Fox.

28. The nurse could not communicate with Ms. Fox to obtain the necessary information about Addison's history or instruct Ms. Fox about Addison's pre-operative care.

29. Because Addison was seven years old, she interpreted and translated the nurse as saying the following, "no medicine for surgery" to Ms. Fox. Ms. Fox believed that Addison was to immediately stop all medication including the antibiotic she was currently taking.

30. Addison had her tonsils and adenoids removed on March 16, 2009.

31. The doctor did not find out until after Addison's surgery that Ms. Fox had stopped Addison's antibiotic on March 9, 2009 instead of continuing it for another week.

32. The doctor was upset as he wanted Addison on the medicine for two weeks before the surgery on March 16, 2009 to prevent infection.

33. Because Ms. Fox cannot hear and communicates via American Sign Language, she is not able to communicate with Trinity medical staff without a sign language interpreter.

34. As Trinity did not line up or have an on-site interpreter, the nurse had Addison act as a sign language interpreter to communicate medical information to Ms. Fox.

35. Having a seven year-old patient interpret was not a reasonable accommodation to facilitate effective communication in order to provide Ms. Fox with equal access to and participation in Trinity's health care services for her daughter.

36. On April 9, 2009, Ms. Fox filed a complaint against Trinity with the Office for Civil Rights.

37. The complaint was based on the afore-mentioned events on March 9, 2009 at Trinity alleging that Trinity denied Ms. Fox a sign language interpreter and failed to provide for any means of effective communication during her daughter's office appointment.

38. On March 4, 2010, Ms. Fox received a letter from Trinity apologizing and stating that readily available processes or resources were not in place to communicate effectively with her.

39. To date, this information is not readily available for patients outside the hospital, and is not even accessible from Trinity's website as of the filing of this lawsuit.

40. Ms. Fox was not able to effectively communicate with Trinity's medical staff as a parent for her daughter's doctor appointment and thus prevented from equal access to and participation in Trinity's services solely because of her disability, deafness.

41. Ms. Fox resides in Fort Dodge and will need access to Trinity's medical services for her and her family's health care needs.

42. According to the Survey of Income and Program Participation ("SIPP") conducted by the U.S. Census Bureau, there are approximately 1 million deaf persons and nearly 10 million hard of hearing persons in the United States as of 2005.

FACTS RELATING TO DEFENDANTS

43. Trinity Regional Medical Center is the largest licensed non-profit private hospital in north central Iowa and is a designated regional referral center and serves an eight county area with a population of approximately 100,000.

44. Trinity Regional Medical Center provides inpatient and outpatient primary and secondary care services and employs over 1,000 health care professionals, technicians, and employees, including 65 physicians.

45. Trinity Regional Medical Center is accredited by DNV Healthcare, Inc., which is a provider of hospital accreditation under U.S. Centers for Medicare and Medicaid Services; Trinity Regional Medical Center receives Federal assistance from Medicare and Medicaid.

46. Trinity Health Systems, Inc. is a senior affiliate of Iowa Health System and serves as the corporate entity focusing on providing professional management and progressive leadership for quality health care services in northwest-central Iowa.

47. Iowa Health System, a non-profit health system corporation, is the largest integrated health system in Iowa and serves nearly one of every three patients in Iowa and has a vision to provide high quality, affordable, and accessible health care services in Iowa.

48. Iowa Health System provides care throughout Iowa and western Illinois by working with 25 hospitals in metropolitan and rural communities and more than 140 physician clinics and employs nearly 20,000 employees.

49. Iowa Health System is the sixth largest nondenominational health system in America with annual revenues of \$2 billion and more than 2.5 million patient visits and owns and operates Trinity Regional Medical Center in Fort Dodge, Iowa.

50. Despite making billions of dollars annually, Trinity Regional Medical Center has not implemented a system that allows deaf or hard of hearing persons to request reasonable accommodations such as a sign language interpreter for appointments.

51. Because there is no procedure in place for Trinity and a person who is deaf or hard of hearing to follow regarding accommodation requests for effective communication, Trinity's lack of equal access and participation in its health care services discriminates against deaf and hard of hearing persons in violation of the ADA.

**TRINITY'S LACK OF PROCEDURE TO REQUEST INTERPRETER SERVICES
IS NEEDLESSLY DISCRIMINATORY**

52. Trinity has taken affirmative steps to discriminate against deaf and hard of hearing people by its lack of procedure to request interpreter services.

53. By not having a procedure for staff and patients to request interpreter services, Trinity has erected a barrier to providing equal access to and participation in its health care systems by failing to have effective communication with deaf and hard of hearing people.

54. Solutions to providing interpreters are easy and inexpensive to implement, including the following:

- a. Establish a procedure to request interpreter services and post it on the website;
- b. Have computer-based interpreters available; and/or
- c. Set up a call-in procedure to identify if an individual needs an interpreter.

55. Rather than implement a procedure to request interpreting services, Trinity has chosen to discriminate against persons who are deaf or hard of hearing.

**COUNT I
Declaratory Judgment that Trinity's Conduct Violates the ADA**

56. Plaintiff incorporates by reference the foregoing allegations.

57. Trinity is a private entity and considered as a public accommodation affecting commerce as a health care provider.

58. Plaintiff and Trinity have adverse legal interests. There is a substantial controversy between Plaintiff and Trinity of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

59. Plaintiff desires a judicial determination of their respective rights and duties, and a declaration that Trinity, by not providing deaf and hard of hearing persons with a means of effective communication for equal access and participation to its health care services, violated and continues to violate the ADA, 42 U.S.C. §§ 12181, et seq. as to Plaintiff and all deaf and hard of hearing persons.

60. Plaintiff seeks a declaratory judgment under Fed. R. Civ. P. 57 and 28 U.S.C. § 2201 that Trinity's conduct described herein violates the ADA, 42 U.S.C. §§ 12181, et seq.

COUNT II

Violation of the ADA, 42 U.S.C. §§ 12182(b)(1)(A)(i)-(iii) and (b)(2)(A)(i)-(iv)

61. Plaintiff incorporates by reference the foregoing allegations.

62. Section 12182(a) of the ADA states: No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.

63. Section 12181(7)(F) defines private entities, like Trinity, as places of public accommodation to include a "professional office of a health care provider" or "hospital" when they affect commerce.

64. Section 12181(1) defines commerce as “travel, trade, traffic, commerce, transportation, or communication—among the several States; between any foreign country or any territory or possession and any State; or between points in the same State but through another State or foreign country.”

65. Trinity Regional Medical Center is a licensed 200 bed non-profit hospital that serves Fort Dodge and surrounding communities, serves an eight county area with a population of approximately 100,000, and employs over 1,000 health care professionals, technicians, and employees and boasts a medical staff of 65 physicians.

66. As a non-profit entity, Trinity is a private entity affecting commerce as health care services and trade as defined in 42 U.S.C. § 12181(1).

67. As part of the state’s largest health care provider, Trinity is a health care provider as defined in 42 U.S.C. §§ 12181(7)(F).

68. Accordingly, Trinity is a “private entity” and “place of public accommodation,” as defined in 42 U.S.C. §§ 12181(1) and (7)(F) & 12182(a).

69. Sections 12182(b)(1)(A)(i)-(iii) state in relevant part that it shall be discriminatory to deny participation to, require participation of an unequal benefit, or provide a separate benefit to an individual or a class of individuals on the basis of a disability or disabilities.

70. Trinity violates Section 12182(b)(2)(A)(ii) by failing to implement a procedure to request interpreting services necessary to afford deaf and hard of hearing people access to and participate in Trinity’s health care services and facilities and this procedure would not fundamentally alter the nature of health care services at Trinity.

71. Trinity violates this section by failing to take the necessary steps to ensure that deaf and hard of hearing people are not excluded, denied services, segregated, or treated differently while receiving health care services by implementing a procedure to request interpreting services, which would not result in undue burden. Further Trinity's aforementioned failure leads to a "real and immediate threat of repeated future harm" to the Plaintiff by not providing effective communication for medical services, an "injury in fact."

72. Trinity violates this section by failing to remove communication barriers, namely the lack of procedure for staff and patients to request interpreting services, which can be implemented and achievable to remove the lack of effective communication with deaf and hard of hearing people.

COUNT III
Violation of the Section 504 of the Rehabilitation Act of 1973

73. Plaintiff incorporates by reference the foregoing allegations.

74. Section 504 of the RA codified under 29 U.S.C. § 794(a) requires that no individual be excluded from the participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance.

75. Trinity constitutes a corporation and/or private organization engaging in the business of providing health care and receiving Federal financial assistance (Medicare and Medicaid) within the meaning of Section 504 of the Rehabilitative Act of 1973.

76. By denying access to and participation in Trinity's health care services to deaf and hard of hearing people, Trinity as a private corporation, is denying Plaintiff full and equal access to the accommodations, advantages, and facilities of Trinity.

77. As alleged above, Trinity is violating the ADA and it is violating the RA.

78. Plaintiff is entitled to injunctive relief to remedy the discrimination.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself, prays for the following relief:

79. A preliminary and permanent injunction prohibiting Trinity from violating the ADA;

80. A preliminary and permanent injunction prohibiting Trinity from violating Section 504 of the RA of 1973;

81. A preliminary and permanent injunction requiring Trinity to implement a procedure for staff and deaf and hard of hearing patients to request interpreting services;

82. Declare that Trinity's lack of procedure to request interpreting services discriminates against deaf and hard of hearing people and fails to provide access to and participation by persons with disabilities, as required by law;

83. Award of the maximum statutory damages, allowed by law;

84. Assess a civil penalty against the Defendants in an amount of \$50,000 for the first violation and not exceeding \$100,000 for any subsequent violation if applicable under the ADA;

85. Award of emotional distress damages to Plaintiff under the Section 504 of the RA of 1973;

86. Award Plaintiff her reasonable litigation expenses and attorneys' fees;

87. Award Plaintiff pre-and post-judgment interest, to the extent allowable;

88. Enter injunctive and/or declaratory relief as necessary to protect the interests of Plaintiff ; and

89. Award such other and further relief as equity and justice may require.

JURY TRIAL

Plaintiff demands a trial by jury for all issues so triable.

Respectfully submitted,

NEWKIRK LAW FIRM, P.L.C.

/s/ Thomas Newkirk

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